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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re: Patent Application of	:	Dated:	17 April, 2006
Kintzele, G. et al	:		
Serial No.: 10/670,623	:	Group:	Art Unit 3632
Filed: 25 September, 2003	:		
For: ELASTIC ARTICLE SUSPEN-	:	Examiner:	King, A. M.
SION DEVICE FOR INFANTS	:		
	:	Action:	APPELLANTS'
	:		REPLY BRIEF
	:		TO EXAMINER'S
	:		ANSWER

APPELLANTS' REPLY BRIEF
TO
EXAMINER'S ANSWER

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MAIL STOP: APPEAL BRIEF - PATENTS
COMMISSIONER FOR PATENTS
P.O. Box 1450
ALEXANDRIA, VIRGINIA 22313-1450

Sir:

The items (1)-(11) are contained within Appellants' Appeal Brief and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of Section 41.37 as revised 3 August, 2005. The following is Appellants' Reply Brief to the Examiner's Answer pursuant to 37 C.F.R. §41.41.

Examiner's Response to Argument

Examiner's response to Appellants' argument that Anderson is not analogous art.

Examiner states that the Anderson reference is "related to a sling having [a] encircling means at one end of a cable for

attaching to a support and a loop at [a] opposite second end for attaching to an object which will be suspended from the support, such as the Appellants' claimed invention." The Examiner argues that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art.

A prior art reference must either be in the field of Appellants' endeavor or, if not, then reasonably pertinent to the particular problem with which the Appellants were concerned. Clearly, Anderson is not in the field of Appellants' endeavor so it must be reasonably pertinent to the particular problem to which the Appellants were concerned. Appellants were concerned with providing easy retrieval of an object thrown off of a highchair or similar seat by an infant. The intended use of the device is to provide a toy tethering device, preventing an infant from throwing toys and other articles on the floor and soiling them while also allowing easy retrieval of the article either by an adult or an infant. The elastic cord and cover of Appellants' device provide for easy grasping of the cord and retrieval of the toy by an infant. There is a structural difference between Appellants' invention and the prior art, specifically the elastic cord and the cover. Anderson is not capable of performing the intended use and is therefore not analogous art.

Examiner's response to Appellants' argument that there is no teaching or motivation to substitute an elastic cord in

Anderson.

Examiner's argument that the cable in Anderson is "somewhat elastic and is flexible" and that "it is generally known that metals, such as, steel wire, have some degree of elasticity" is completely without merit. Steel can be flexible but by its very nature steel is not elastic. The "sling suspension comprises a substantially thin strand 8 of flexible material, such as steel wire cable", page 1, column 1, lines 68-70. There is absolutely no indication in Anderson that the cable is "somewhat elastic" and, in fact an elastic cable would be contrary to the teaching in Anderson. Anderson is concerned with securely suspending an article. "The security with which the carcass is held increases with the imposition of increased load forces upon the suspension." Page 1, column 1, lines 34-36. The Examiner's argument that the degree of elasticity is neither presented in Appellants' specification nor claimed invention is not true. The degree of elasticity is not in issue. Appellants' most representative claim, claim 12, clearly claims "an adjustable elongated single elastic cord". The Examiner has not shown any motivation or teaching in Anderson to substitute an elastic cord.

Examiner's response to Appellants' argument that there is no suggestion to combine Anderson with Dalmaso.

The Examiner's response to Appellants' argument that there is no suggestion or teaching to combine the references does not address Appellants' argument. The cover of Dalmaso does not

aid in providing a shock absorbing means to the device. The Examiner continues to ignore the fact that the jacket 18 in Dalmaso does not limit the extension of the cord. The jacket is designed to rupture, freeing the flag from the jacket. Once again, the jacket 18 in Dalmaso does not provide any type of shock absorbing means, contrary to the Examiner's argument that "there are not any critical characteristics provided for the Appellants' cover". There is no motivation, teaching or suggestion to combine Dalmaso with Anderson. It is also pure speculation on the part of the Examiner to state that Dalmaso could be made of a highly absorbent material "wherein the cord covered by the cover may be protected from rusting or deterioration caused by the blood or other foreign matter absorbed by the cover". This ignores the element of motivation. There is no motivation to combine Anderson with the cover of Dalmaso including the substitution of an elastic cord.

Examiner's response to Appellants' argument that there is no teaching or suggestion to combine Anderson with Dalmaso and Gabriel.

The Examiner argues that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Anderson combined with Dalmaso to include the carabiner for the purpose of providing the means to clip the device to another object for storage or transporting. The Examiner provides no support for the argument of obviousness. "One asserting obviousness cannot pick and choose among individual elements of assorted prior art references to recreate the claimed

invention; a challenger must show in the prior art some teaching or suggestion of the claimed combination of elements. **Symbol Technologies, Inc. v. Opticon, Inc.**, 935 F.2d 1569, 1576, 19 USPQ 2d 1241, 1246 (F.Cir. 1991).

Examiner's response to Appellants' argument that there is no teaching or motivation to combine Anderson with Dalmaso and Giacono, III.

The Examiner does not address the fact that there is no motivation or teaching in Anderson to suggest utilization of a snap fastener or releasable handle as taught by Giacono, III. Substituting the snap fastener taken from Giacono, III would be contrary to the stated objectives of Anderson.

The Examiner argues that "Giacono is used to teach an alternative means for clamping the adjustable loop at the desired position and to modify the clamping means in Anderson with the clamping means taught by Giacono". There is no teaching, suggestion or motivation to do so found either in the references themselves or in the knowledge generally available for one of ordinary skill in the art.

For the above reasons, it is believed that the rejection should be overruled.

Respectfully submitted,

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CERTIFICATE UNDER 37 C.F.R. 1.8

I hereby certify that the foregoing Brief on Appeal is being deposited with the United States Postal Service as first class mail in an envelope addressed to MAIL STOP: APPEAL BRIEF - PATENTS, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 223113-1450, this 17th day of April, 2006.

Maureen Robertson
